

Defendant Ted Baer, appearing specially by and through his attorneys of record, hereby motions the Court to strike Plaintiff Incentive Capital's Memorandum in Opposition to Ted Baer's Motion to Dismiss for Lack of Personal Jurisdiction. The Court entered an Order on July 1, 2011,

that required Plaintiff Incentive to file its opposition to Defendant Ted Baer's Motion to Dismiss five days after the Atwell Defendant's filed an answer to Plaintiff Incentive's Complaint. The Atwell Defendants filed their answer to Plaintiff Incentive's Complaint on July 27, 2011, which triggered the five-day deadline for Plaintiff's opposition to be filed. Properly calculated, the five-day period expired on August 1, 2011. Even if the weekend is excluded in calculated the 5-day period, the time for Plaintiff Incentive to respond to Defendant Ted Baer's Motion to Dismiss expired at the very latest on August 3, 2011. Plaintiff Incentive Capital did not file its opposition memorandum until August 5, 2011.

Defendant Ted Baer accordingly requests that the Court strike Plaintiff Incentive's Memorandum in Opposition to Ted Baer's Motion to Dismiss for Lack of Personal Jurisdiction.

DATED this 10th day of August, 2011.

MORGAN, MINNOCK, RICE & JAMES, L.C.

/s/ Dennis R. James

Dennis R. James

Brian H. Hess

Counsel for Defendant Ted Baer

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2011, I electronically filed a true and correct copy of the foregoing **DEFENDANT TED BAER'S MOTION TO STRIKE PLAINTIFF INCENTIVE'S MEMORANDUM IN OPPOSITION TO TED BAER'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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